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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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21918	7590	05/02/2005	EXAMINER	
DOWNS RACHLIN MARTIN PLLC			PATTERSON, MARIE D	
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BURLINGTON, VT 05402-0190			3728	

DATE MAILED: 05/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

10/763,742

Applicant(s)

DODGE, DAVID J.

Examiner

Marie Patterson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-35, 42-64 and 68 is/are pending in the application.
- 4a) Of the above claim(s) 51, 55 and 61-63 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34, 35, 42-47 and 64 is/are allowed.
- 6) ☒ Claim(s) 32, 33, 48-50, 52-54, 56-60, and 68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Election/Restrictions

1. Claims 51, 55, and 61-63 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a non-elected invention and/or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 9 of application 09/966257. Note that this is a continuing application and therefore MPEP 819 states that the restriction election in the parent application carries over to the child application when the child applicant is a continuing application and not a divisional or continuation in part.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 32 is rejected under 35 U.S.C. 102(a or e) as being anticipated by Warner (5901471).

Warner shows a binding comprising a toe member (54), a heel member (34), a first means and second means (elements 46 located on the medial and lateral sides of the binding which are clearly capable of being received into receivers located on the

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medial and lateral sides of an engagement member at 44 of a footwear 10 having such elements), and a third means (shown in figure 3 as a bar with holes and an adjustment screw/pin) for adjusting the distance between the toe and heel members as claimed. It is noted that claim 32 does not positively recite or claim the footwear or the engagement member as part of the combination, such elements have been merely recited as part of an intended use recitation and have been treated as such.

2. Claims 52, 54, 56-60, and 56-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Bejean (5954358).

In reference to claims 56-60, Bejean shows a binding comprising a base (13), a latch (15) with a pivot axis (153), a catch (151) which is attached to said latch and which is spaced from said pivot axis and is capable of removing coherent material from a cavity (formed between elements 11 and either 122 and 123 or the sole of the shoe), and an opening through said latch (formed below the pivot axis (153) and above the base and extending over laterally to element 151) as claimed.

In reference to claim 52, Bejean shows a binding comprising a base (13) and first means (15) which releasably engages an engagement member (11) and the first means is "self clamping" (i.e. the user merely needs to step onto the binding which the pressure of element 11 would cause element 158 to rotate to allow it to pass below element 158 and element 158 would return to the original orientation (due to the pressure of the springs 157a and b) blocking the upward motion of the element 11, therefore the first means self clamps or "automatically fits" as stated by Bejean the shoe to the binding) as claimed.

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3. Claims 52, 53, and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Bayer (5957479).

Bayer shows a binding comprising a base (1016 or 16) with a first means (1020 or 20) engaging said base for releasably engaging the engagement member and the first means being self clamping (as shown in figures 6A-6C) as claimed.

4. Claims 52, 54, 56-59, and 68 are rejected under 35 U.S.C. 102(a or e) as being anticipated by Morrow (6189913).

In reference to claim 56, Morrow shows a binding comprising a base (52), a first means (78) for releasably engaging the receiver, second means for ejecting the coherent material (the rounded element 80 and the lower point shown in figure 10), and a third means for allowing the coherent material to move away from the receiver (the space between element 46 and 52, shown in figure 10) as claimed.

5. Claims 52, 54, 56-58, and 68 are rejected under 35 U.S.C. 102(a or e) as being anticipated by Karol (5690351).

In reference to claims 52 and 54, Karol shows a "self clamping" binding, i.e. it clamps and hold the engagement member in position as claimed.

In reference to claims 56-58, Karol shows a binding comprising a base 36), a first means (34 and 44), a second means (curved top shape of element 34), and a third means (angled portion shown at 40 in figures 7 and 9) as claimed.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Warner (5901471) in view of Polk (5794362).

Warner shows a binding comprising a binding as discussed above substantially as claimed except for the exact third means. Polk teaches the use of a threaded rod (160) for adjusting the distance between a toe (42) and heel member (40). It would have been obvious to use a threaded rod as taught by Polk as the third means for adjusting the distance between the heel and toe members in the binding of Warner to provide increased options of adjustability and to make the adjustment quicker and easier.

8. Claims 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watson (5970632) in view of Bejean (5954358).

Watson shows a binding comprising a toe member (310 and 311), a heel member (312), first means for releasable engagement (311) with a boot, and a second means for adjusting the distance between the heel and toe members (315 and threaded rod 318) substantially as claimed except for the exact first means for releasable engagement with the boot. Bejean teaches the use of latches with catches and springs (as discussed above) as means for releasably engaging boots. Watson clearly suggests looking to snowboard bindings for suggestions to modify (see figure 18 and column 10 lines 26-49). It would have been obvious to use latches with springs and

catches as taught by Bejean in the binding of Watson to provide a binding which is easier and quicker to attach and detach.

Allowable Subject Matter

3. Claims 34, 35, 42-47, and 64 are allowed.

Response to Arguments

4. Applicant's arguments filed 2/14/05 have been fully considered but they are not persuasive.

In response to applicants' arguments directed towards the rejection of claims 52-55 based on the definition of "self-clamping", it is noted that the term clamping is defined in Webster's New World Dictionary as "gripping, fastening, or bracing" and Claims in a pending application should be given their broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974). The devices of the prior art are considered to be "self-clamping" inasmuch as such has been defined in the claims because they grip and fasten the engagement member to the binding. Even using applicants definitions recited on page 10 of his arguments, the elements of the prior art, such as Bejean do fit this definition, i.e. the elements 15 and 11 do fasten and grip with a "clamp", which applicant has defined a clamp as being a device used to join, grip, support or compress mechanical or structural parts. Element 15 of Bejean clearly is an element which joins and grips the mechanical/structural part (10 or 11) and thereby fastens, grips and braces the elements together and element 15 clearly meets the definition applicant has provided as being a "clamp". The clamping is actuated by the user stepping onto the

device as described above in the rejection and therefore the structure are "self-clamping".

In response to applicants arguments directed towards the clamping function/engagement of the elements of Bejean, the force applied to the latch 152 by the engagement member 11 does cause the latch to rotate out and back into a clamping engagement with the structure 11, i.e. element 152 does join, grip, and support the structural parts together. Applicants' arguments are confusing and contradictory in that his definition of clamping is essentially "self-joining", "self-gripping", "self-bracing" however applicant considers this to be different than "self-closing", or "self-fastening". This is unclear. The element 152 does rotate back into engagement with element 11 and resists the removal of the element by force against the element and thereby is "self-clamping", "self-joining", "self-gripping", "self-bracing", and/or "self-fastening" since it appears that these terms given their broadest reasonable interpretation are essentially the same.

In response to applicants' argument that the cavity formed between element 11 and the side of the sole (1a) is not a "cavity", i.e. hollow space within a solid object", (it is noted that another definition of cavity is "a hole or hollow place" Webster's New World Dictionary 3rd college edition). The space formed between element 11 and the side of the sole is a "cavity", i.e. a hollow space within a solid object (the footwear) and it is as well a hole. Furthermore it is noted that the definition of a "hole" is "an opening in or through anything, break, gap" and the definition of "aperture" is "an opening; hole; gap" and therefor applicants arguments are confusing and contradictory because a cavity is

a hole which is an aperture and applicant has stated that Bejean shows an aperture. A cavity does not require concavity as argued by applicant.

In response to applicants' arguments directed towards Bayer, the means and elements of Bayer are considered to be "self-clamping" inasmuch as applicant has defined such (see similar response to applicants' arguments directed towards Bejean). Claims in a pending application should be given their broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974).

In response to applicants' arguments directed towards Marrow, the lower portions of 80 shown in figure 10 would clearly poke through the cavity during initial engagement (see figure 12) and push out and debris in the cavity and the debris would then fall down into the area under 46, i.e. a third means for allowing the coherent material to move away from the receiver. Figure 10 clearly shows that the area under 46 would be a space during engagement. Even if as argued by applicant there is a sole element under 46, directly under the peripherally extending portion of 46 near the cavity would be a space which would allow coherent material to drop down into and away from the receiver.

In reference to applicants' arguments directed towards Karol, Karol shows a "self clamping" device inasmuch as applicant has defined such (see above response to arguments directed towards Bejean). Also, the elements 60 are clearly a cavity and applicants arguments that they are not cavities are not understood, especially since these structures appear to be the same as those disclosed by applicant as cavities. There is no requirement by the definition of a cavity for it to have to be concave.

Applicant appears to merely come up with different words to try to import limitations to overcome rejections, the claims as written will be given their broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974).

In response to applicants' arguments directed towards the ejecting element of Karol, the shape of element 34 of Karol would clearly act to force materials over the curved portion.

In response to applicants' arguments directed towards the rejection of claim 32, even if the preamble is given weight, Warner does show a binding for receiving footwear having a toe (at reference number 18 in figure 2), heel portion (at area near reference number 26 in figure 2), an engagement member (38) which has first and second receivers located on opposite lateral sides of the engagement member (42 and 44) and the binding comprises a toe member (54), a heel member (34), a first means and second means (elements 46 located on the medial and lateral sides of the binding which are clearly capable of being received into receivers located on the medial and lateral sides of an engagement member at 44 of a footwear 10 having such elements), and a third means (shown in figure 3 as a bar with holes and an adjustment screw/pin) for adjusting the distance between the toe and heel members.

In response to applicants' arguments directed towards the rejection of claim 48, see above response to applicants' arguments directed towards Bejean.

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

1. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see **<http://pair-direct.uspto.gov>**. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.
In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at **(703) 872-9306 (FORMAL FAXES ONLY)**. Please identify Examiner Marie Patterson of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Marie Patterson whose telephone number is (571) 272-4559. The examiner can normally be reached from 6AM - 4PM Mon-Wed.



Marie Patterson
Primary Examiner
Art Unit 3728